

GEORGE E. CONLEY

IBLA 70-53

Decided January 13, 1971

Oil and Gas Leases: Generally

Where the United States has paid for land and claimed title to that land for almost 40 years, but title has not been perfected, oil and gas leases may be issued on that land if the public interest and fairness to the offeror warrant such action.

Oil and Gas Leases: Applications: Generally

The United States does not make any warranty of title to oil and gas deposits when it issues an oil and gas lease and it assumes no obligation to defend validity of lease against prior claims.

IBLA 70-53 :

NNM-A 0161403

GEORGE E. CONLEY

: Acquired land non-
: competitive oil and
gas lease application
rejected

: Vacated and remanded

DECISION

George E. Conley has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Bureau of Land Management, dated April 9, 1969, which affirmed a New Mexico land office decision of February 19, 1968. The land office decision rejected Conley's acquired lands oil and gas lease offer NM-A 0161403 as to lands in the W 1/2 NE 1/4, SE 1/4 NW 1/4, E 1/2 SW 1/4 of sec. 24 and certain subirrigated land between elevations 3272.6' and 3276.6' in T. 19 S., R. 26 E., N.M. P.M., New Mexico, west of the McMillan Reservoir, Carlsbad Project. Conley's offer as to the subirrigated land was rejected for the reason that title of the United States to the mineral estate had not been confirmed. Conley only appeals this portion of the decision 1/ rejecting his offer as to the subirrigated land.

Conley contends that, even though the United States may not have "perfected" title to the subirrigated land, the United States does own the land and has exercised sole and continuing dominion thereover for more than 30 years. Conley also contends it is inequitable to reject his offer, as other leases have been granted for these same lands. In the alternative, Conley requests that his offer remain pending until title is perfected.

The Bureau of Reclamation furnished the following information to the Santa Fe land office.

1/ See Conley decision of even date in which part of land in lease offer NM-A 0161403 is included in lease NM-A 0214711.

Condemnation proceedings were begun in the case of U.S. v. Charles A. Bigelow, et al., Civil No. 361 (D. N.M., filed January 18, 1915), for the acquisition of shoreline lands below elevation 3272.6'. Owners of the marginal boundary of the McMillan Reservoir between elevation 3272.6' and elevation 3276.6' on the west side of the reservoir petitioned to intervene, alleging that their lands were also taken by construction of the reservoir. The court granted this petition.

The fee value of the lands was determined by appraisals made under supervision of the court. As a prerequisite to a final order establishing title, the judge required payment to be made for the land. Payment was made to the owners in the 1930's and the United States has exercised dominion over the tract since that time. Because of the death of the presiding judge in the case, and other unforeseen circumstances, a court order reciting title was never issued as to those lands between the elevation 3272.6' and 3276.6'. The title is clear as to those lands below elevation 3272.6'.

The Bureau of Reclamation states it claims title to the land, but has no plans to perfect title. It has no objections to leasing the lands for oil and gas exploration, if the lessor agrees to special stipulations that the Government does not warrant title. 2/

William W. Ogden, A-29976 (March 25, 1969), The California Co., et al., A-30287 (March 25, 1969), and The California Co., A-28753 (July 30, 1962), are directly in point. In the cited cases there is a dispute as to whether the United States or the State of Louisiana has title to certain lands. Because of the dispute, the Department of the Army, which has jurisdiction over the land, would not give its consent to lease. Therefore, in these decisions it was stated, following prior decisions, 3/ that the Secretary may reject an offer to lease if there are unresolved title claims to the land. These decisions also held that the Secretary cannot give authority to lease acquired lands without the agency's consent. The appellants in these cases requested reconsideration of these decisions, stating that the Department of the Army had become amenable to a

2/ The record indicates that some other land between elevation 3272.6' and 3276.6' has previously been leased and that part of the land that has been leased is within a producing unit.

3/ See Duncan Miller, A-30451 (November 17, 1965); Pexco, Inc., et al., A-28017 (July 11, 1960).

new request for leasing. Also, although there was doubt as to title, the United States maintained that it had title. The petitioners urged the Department to assert its claim to the land through issuance of leases, as some of the lands were covered by State leases. The Department vacated its prior decisions and remanded the cases for adjudication on the basis of current records, stating that public interest and fairness to the petitioners warranted granting the request. The California Co., et al., William W. Ogden, A-28753 (Supp.), etc. (June 3, 1969).

We believe the decisions in The California Co., supra, and Ogden, supra, to be applicable to these circumstances. Here, the United States has claimed title to the land for almost 40 years. Leases on land in the questioned area have been issued in the past and it appears that part of the land is in a producing unit. ^{4/} Thus, to be fair to the offeror and the other lessees in the area, and to protect the public interest, the United States should continue to assert its right to lease the land between elevations 3272.6' and 3276.6'.

When the United States issues an oil and gas lease it makes no warranty of title to the oil and gas deposits and assumes no obligation to defend the validity of the lease against prior claims, Duncan Miller, A-30451 (November 17, 1965); Duncan Miller, Union Oil Co., A-27727 (December 9, 1958). Thus the lessees take leases in this area subject to all infirmities and to the Bureau of Reclamation's stipulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is set aside and remanded for further proceedings consistent herewith.

Edward W. Stuebing, Member

I concur: I concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

^{4/} It should be noted that, according to a March 22, 1961, report from the Geological Survey, the land covered in Conley's offer is not within a known geologic structure or a producing oil or gas field. A new report must be obtained prior to issuance of any lease.

